IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 93 OF 2005

United Storage & Tank Terminals Ltd. .. Applicant

Vs.

Apar Industires Ltd. .. Respondent

Ms. Fereshte Sethna wtih Ms. Dipti Das i/b Dunmorr Sett for applicant.

Mr. A.Y. Bookwala, Sr. Counsel i/b Peter Lobo for respondent.

CORAM : B. H. MARLAPALLE,J.

Date : May 05, 2006.

P.C.:

1. Arbitration Application No.57 of 2003 was allowed by this Court on 2/5/2003 by nominating Mr. B.L. Mehta and Mr. Navnit A. Shah as the panel Arbitrators representing the respective parties. These two panel Arbitrators had appointed Mr. Justice S.P. Bharucha (retired Chief Justice of India) as the Presiding Arbitrator, who by his letter dated 8/1/2004 submitted resignation. Mr. Navnit A. Shah, who was representing the respondent also tendered his resignation and, therefore, the respondent had nominated Mr.S.R. Mishra on 4/4/2004. Mr. Mehta and Mr. Mishra, the two panel arbitrators met and appointed Mr. Justice Dr.B.P. Saraf (retired Chief Justice of Jammu and Kashmir High Court) and thus the

arbitral tribunal was reconstituted on or about 7/6/2004. An application came to be presented before the arbitral tribunal on 4/8/2004 by the respondent-company contending that there was no clause of arbitration in the agreement and, therefore, the arbitral tribunal had no powers, authority or jurisdiction to arbitrate in the disputes between the parties raised in the statement of claim. This application was allowed by Mr. S.R. Mishra, the panel Arbitrator of the respondent, by his order dated 13/1/2005. However, the same application came to be rejected by the majority order passed on 14/1/2005 and, therefore, in the eyes of law the application filed by the respondent came to be dismissed. The respondent has filed a Review Application on 21/3/2005 and the Review Application also has been rejected on 31/3/2005 and this rejection order is signed by all the three Arbitrators.

2. The arbitration proceedings were held on 1st April 2005 and the dates for further proceedings were also finalised. The next date for the arbitral tribunal was 25/4/2005. However, vide his communication dated 20/4/2005 Mr. S.R. Mishra, Advocate and Solicitor communicated to the Presiding Arbitrator as well as the panel Arbitrator of the present petitioner, his resignation as an Arbitrator

and this communication is treated to be a resignation from the arbitral tribunal constituted by this court.

3. On 22/4/2005 the learned Advocate for the petitioner submitted an application before the arbitral tribunal and a copy of the same was marked to the Advocate of the respondent as well as the respondent-company calling upon them to nominate the respondent-company's panel Arbitrator within the mandatory period of 30 days commencing from the date of the resignation submitted by Mr. Mishra. There was no response and, therefore, this application came to be filed for reconstituting the tribunal appointed as per the order of this court dated 2/5/2003.

4. By relying upon the Constitution Bench decision in the case of S.B. Patel & Co. vs. Patel Engineering Ltd. and anr. **[(2005) 8 SCC 618]**, the respondent-company filed reply and raised the very same objection in this arbitration application, namely, that there was no provision for arbitration in the agreement signed between the parties and, therefore, this application is required to be rejected. After hearing the learned counsel for the respective parties at length, I recorded the submissions of the learned counsel for the respondent in the order dated 21/4/2006 and noted that the

contention so raised sought to review the earlier order passed by this Court on 2/5/2003 in Arbitration Application No.57 of 2003 and such a Review Application could not be entertained in an application filed under Section 11(6) of the Act for reconstitution of the tribunal already constituted on account of the resignation of one of the Arbitrators and an adjournment for one week was allowed at the request of the learned counsel appearing for the respondent-company so as to give it time to take out appropriate proceedings. However, inspite of the period of one week having been lapsed, no steps have been taken and, therefore, this application is required to be decided now and without taking into consideration the arguments advanced opposing the application. However, in the meanwhile, Mr. Justice Dr.B.P. Sarap (Retd.) also tendered his resignation on 25/4/2005 as the Presiding Arbitrator and in any case this development does not in any way affect the application which is seeking an order to nominate the panel Arbitrator of the respondent-company as the two panel Arbitrators will have to meet and nominate the Presiding Arbitrator in place of Mr. Justice Dr.B.P. Saraf (retired Chief Justice of Jammu and Kashmir High Court).

5. In the circumstances, I allow this application and appoint Mr. Justice S.D. Pandit, retired Judge

of this Court as the panel Arbitrator for the respondent-company. Mr.B.L. Mehta and Mr.Justice S.D. Pandit (retired) are requested to meet within a period of three weeks from today and nominate the Presiding Arbitrator so that the arbitral tribunal is reconstituted within a period of six weeks from today.

6. A copy of this order be forwarded to Mr.Justice S.D. Pandit (retired) as well as Mr. B.L. Mehta forthwith.

7. Certified copies to the parties be issued on priority.

(B.H. Marlapalle, J.)